

**TRIAL JUDGE**

**SAYS**

**LAST WORD**

**ON BIAS**

**OF JURY,**

**DECLARES**

**COURT OF**

**APPEALS**

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Important Decision  
Handed

Down, Following  
Close Up-

on Heels of Judge  
Roan's

Decision in Frank  
Case, in

Which He Decided  
Jurors

Were Competent,  
and De-  
nied New Trial.

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*FRANK'S LAWYERS  
WILL  
TAKE CASE  
IMMEDIATELY  
TO THE SUPREME  
COURT*

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Bill of Exceptions Filed  
to

Rulings of Judge  
Roan.

Rosser and Arnold  
Renew

Their Expressions of  
Faith

in Their Client's  
Innocence

and Will Fight  
Bitterly.

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Following upon the heels of Judge Roan's decision denying Leo M. Frank a new trial, the court of appeals affirmed an old principle of law yesterday to the effect that the trial judge is the trier as to the competency of jurors. Courts of review will not go

behind the decision of the trial judge as to whether or not the jury was biased.

The case was that of Taylor v. the State, which was tried before Judge R. W. Freeman in Heard county. On the motion for a new trial, the defendant introduced numerous affidavits for the purpose of showing that two of the jurors were prejudiced and biased against the accused. Juror Crockett was alleged to have said that the “defendant ought to be hung.” He declared, it was said, that he did not see any chance for him. The defendant and his counsel were both in ignorance of the bias of the juror.

Each of the attacked jurors denied on oath the statements attributed to him and asserted that he was controlled solely by the evidence delivered upon the stand in the rendition of the case.

### **Judge a Trior.**

The court says:

“In passing upon a ground of a motion for a new trial in a criminal case, based upon alleged bias or prejudice of a juror against the movant, evidenced in part by expressions of opinion previous to the trial as to the guilt of the accused, the judge of the trial court occupies the place of a trior, and his finding that the juror was competent will not be reversed, unless it was manifest that his discretion was abused.”

In another place the court declares itself even more emphatically:

“In this conflict, ‘that is a conflict between jurors and their attackers by affidavit,’ it was for the trial judge to determine who swore truly—the witnesses who attacked the jurors or the jurors themselves. The credibility of the witnesses, on the other hand, and the jurors, on the other, was a matter solely for his determination and his conclusion is not reviewable.”

### **Numerous Past Decisions.**

This decision of the court of appeals is backed up by numerous citations of previous decisions of the supreme court, so that there can be no doubt that the supreme court will not consider the question of the bias of the jury in passing upon the Frank case. That question has been finally passed upon by Judge Roan, who, in denying Frank a new trial, has declared that, in his opinion, the jurors who tried him were competent.

There are other grounds that the supreme court may consider, but they are limited largely to the admissibility of evidence and the direction given the case by the trial judge. For error of law or evidence of bias on the part of the court against the accused, they may grant a new trial.

### **Prepare for Appeal.**

Denied a new trial by Judge L. S. Roan, the defense of Leo M. Frank is preparing one of the most determined legal battles ever staged in the supreme court of Georgia.

On the other hand, the forces of Solicitor General Hugh M. Dorsey, now augmented by Attorney General Tom Felder, are equipping themselves to combat the fight planned by Frank's defense.

Mr. Rosser said Friday afternoon:

"We will never relinquish of the man's innocence. We are convinced of the man's innocence. Justice will finally be done."

Mr. Arnold:

"Never a doubt has existed in our minds that the man deserves a new trial. We are satisfied to go to the supreme court, and are willing that the matter be decided simply on the legal points involved."

Herbert Haas, associate in the defense, said:

"As long as there is breath in our bodies we will fight. We are confident that the supreme court will grant a new trial."

These were Solicitor Dorsey's words:

"The law is on our side in every contested point. That's all there is to say. The time to talk is when the court is not with you. It is with us in this instance and there's no necessity for talking."

Frank A. Hooper, associate prosecuting attorney:

"Frank had a fair and just trial. He does not deserve a new trial. Judge Roan ruled properly."

### **Bill of Exceptions.**

The bill of exceptions will be filed with the clerk of supreme court some time today. This will mark the first chapter of the coming battle. Considerable time will elapse before the arguments are heard, and it is expected that they will not come before the court until January or February.

The bill of exceptions is but a bare skeleton of facts, containing the data of Frank's original trial, the motion for new arraignment and Judge Roan's decision; also, a number of important grounds in the motion along with the affidavits presented at the new trial hearing by the defense.

Following the presentation of the bill of exceptions, the brief of evidence and amended motion for new trial will be put in pamphlet form at the printers. This will require probably three weeks. The case is not expected to be heard in the supreme court before the new year at the earliest.

In a statement given to a Constitution reporter Friday afternoon Attorney Frank Hooper spoke for the first time of prejudice that arouse in the Frank case. He declared that the defense was not justified in his attack upon Solicitor Dorsey, in which he was accused of bitterness toward the prisoner because of Frank's race.

"A Scandinavian or an Irishman would have been prosecuted just as vigorously as Frank," declared the attorney. "The solicitor did only his duty. The word Jew seldom entered the prosecution's

line of attack. Particular pains were taken to exclude all atmosphere of prejudice. It was not the solicitor's fault that the defense injected their client's religion in the trial."

### **Says Dorsey Was Fair.**

"Solicitor Dorsey prosecuted Frank as he prosecuted scores of Gentile criminals."

An interesting phase of the fight to be waged before the supreme court is found in the entrance of Attorney General Tom Felder into the case. Mr. Felder is legally thrown in co-operation with the prosecution the moment the bill of exceptions is filled with the clerk of court.

He will confer with Solicitor Dorsey at an early date, at which conference plans will be mapped out for the prosecution's lines of combat. Mr. Felder has already been notified of the plea Frank's defense will make to the supreme court.

### **Judge Roan's Decision.**

Judge Roan's decision was announced in his chamber in the Thrower building Friday morning at 10:10 o'clock only a few spectators were present. Messrs. Arnold, Rosser and Haas were present, as was Solicitor Dorsey. The following formal decision was read:

"After considering the above and foregoing motion and affidavits by the defense and the state, the motion for a new trial is hereby overruled and denied. This October 31, 1913. (Signed) L. S. Roan, judge superior court, Fulton court, presiding."

Following which the Judge said:

"I have heard all the evidence in this case, and, taking it altogether, I am not thoroughly convinced as to the innocence or guilt of defendant. The jury having passed upon his case and been convinced of his guilt, however, I do not feel disposed to overturn its verdict. I consider it any duty to over-rule this motion."

Mr. Rosser was immediately on his feet, praying that Judge Roan not resign from the superior court bench until he had certified the bill of exceptions to be presented to the supreme court.

The judge did not commit himself, asking merely how much time would be required in forming the bill. He was told that it would probably be made some time Friday.

A strong plea was made by the defense to admit to the supreme court the remarks of Judge Roan relative to his doubt as to either the guilt or innocence of Frank. This was not granted. The judge stated, however:

### **Judge's Remarks Significant.**

"It will be permitted if my remarks are contained in the bill of exceptions."

It is presumed that this has been done by the defense.

In his cell in the Tower, Frank awaited the decision with his wife. He was brought the news by M. Selig, a relative. He made but little comment, hearing the verdict with characteristic fortitude. Mrs. Frank, however, broke into tears.

The prisoner refused to make a statement to a newspaper reporter, who made written requests. He was visited by a number of relatives. Rabbi David Marx also called at his cell during the day, and was present at the time the decision was brought in.

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